

September 3, 1986

REPORT TO THE COMMITTEE ON TRANSPORTATION AND LAND USE  
PENALTIES FOR FAILURE TO APPLY FOR VARIANCES OR CONDITIONAL USE  
PERMITS

At the City Council meeting of May 13, 1986, the City Attorney was directed to report to the Transportation and Land Use Committee regarding, (1) what fines and penalties are imposed on owners or builders who apply for conditional use permits or variances after already having built projects in violation of the San Diego Municipal Code (the "Code"), and (2) what fines or penalties may be imposed on projects for which proper permitting is never sought.

Section 101.0204 of the Code authorizes a penalty for applications for permits which have been filed after use of the property has commenced and violation of the Code. In pertinent part, that section provides:

...

Any application filed pursuant to this Section shall be accompanied by a fee/deposit equal to one and one-half times the fee/deposit set forth in the schedule on file in the Office of the City Clerk if the application is filed after the use of the property has commenced and such use is in violation of the zoning regulations of the Municipal Code. An amount equal to one-half the fee or one-half of the costs incurred by the City in processing the application whichever is applicable shall be charged against the fee/deposit of the application in addition to the fee or the costs incurred by the City.

An additional charge will not be assessed if applicant provides evidence that the use of the property for which a permit is required was begun prior to the applicant's acquisition of the property.

....

With the exception of those who are not responsible for the existence of the violation, Section 101.0204 provides for a penalty fee or fine for late applications whether the permits are sought voluntarily or whether they are mandated as a condition of probation by the courts. A fine equal to one-half the application fee or one-half the cost of processing the application will be charged in addition to the actual fee or

costs for the application if the project has been illegally constructed and its use has begun.

When a violator of the zoning laws refuses to file an application for proper permitting, the Code Enforcement Unit may be employed to compel compliance.

The Code Enforcement Unit is encharged with the enforcement of San Diego's land use ordinances (zoning, building, signs, fire, health and housing codes). A diagram of the Code Enforcement Unit process is attached to provide a brief overview.

Once the Code Enforcement Unit receives a case from a department, it first evaluates the case to see if sufficient evidence of the violation exists. In most cases, the Code Enforcement Unit initially sends a demand letter to the alleged violator. The Code Enforcement Unit gains compliance in approximately sixty percent of its cases by merely sending a demand letter. Yet, where a violator chooses to ignore the demand letter, a criminal or civil complaint will be filed by the Code Enforcement Unit.

The great majority of court actions filed by the Code Enforcement Unit are criminal. Equitable civil actions require the City to show some type of imminent danger or serious harm to the public's health and safety before issuance of a preliminary injunction. For example, where raw sewage is flowing down the public streets or where a vacant building is open and poses a significant fire hazard, sufficient irreparable harm exists to obtain a preliminary injunction. Most of the cases sent to the Code Enforcement Unit fail to satisfy this legal standard.

In cases where the violation does not pose such an imminent threat, a misdemeanor criminal complaint is filed against the violator. The maximum penalty is \$1,000.00 and/or six months in jail for each violation. Each day can be charged as a separate and new violation. In all likelihood, a criminal complaint would be filed against an individual who failed to remove a structure or stop a use that was denied by variance or conditional use permit. Once the Code Enforcement Unit obtains a conviction, the court usually places the violator on three years of informal probation on the conditions that the violator pay a fine (fines

have ranged from \$75.00 to a maximum of \$750.00) and bring the particular violation into complete compliance with the City's land use ordinances. Thus, the violator is ordered by the court to obtain the proper permits or comply with the proper conditions as part of the terms of probation. If the violator refuses to comply with the terms of probation, the Code Enforcement Unit can request the judge to revoke probation. The judges may send the violator to jail. The Code Enforcement Unit has prosecuted

several cases where defendants have spent three weeks in jail for violations of the City's zoning ordinances.

A question has been raised regarding the ability of the City to obtain court orders to remove permanent structures. The Code Enforcement Unit has successfully prosecuted cases where the court has ordered the removal of the structure. The courts have established a strong policy in favor of a municipality's authority to uphold and enforce zoning and building codes. They have determined that such a strong interest in these areas outweigh any of the equities that may favor the individual owner.

Hopefully, each member of the Transportation and Land Use Committee will now have a better understanding of the enforcement tools which can be employed to gain compliance with San Diego's land use ordinances.

Respectfully submitted,  
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City Attorney

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Attachment

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